



**DEPARTMENT OF ENERGY**  
**Federal Energy Regulatory Commission**  
**[Docket No. UL22-1-000]**

**Consolidated Hydro New York, LLC; Notice of Pending Jurisdictional Inquiry and Soliciting Comments, Protests, and Motions to Intervene**

On May 4, 2022, the Federal Energy Regulatory Commission (Commission) received a request from U.S. Department of the Interior's Fish and Wildlife Service (FWS) for a jurisdictional determination for the unlicensed Winnie's Reef Dam. Commission staff's review of Consolidated Hydro New York, LLC's final license application for the Victory Mills Hydroelectric Project (FERC Project No. 7153) found information stating that Winnie's Reef Dam is operated to maintain the water levels of Saratoga Lake. In addition, comments on the license application for the Victory Mills Project and in FWS's jurisdictional request state that Winnie's Reef Dam controls flows downstream in Fish Creek and may provide headwater benefits for both the Victory Mills Project (approximately 5 miles downstream of Winnie's Reef Dam) and the Schuylerville Project No. 8606 (approximately 0.6 miles downstream from Victory Mills Project). As a result, the Commission is beginning a review of the Winnie's Reef Dam to determine whether it is subject to the Commission's mandatory licensing jurisdiction under section 23 of the Federal Power Act (FPA).

Pursuant to section 23(b)(1) of the FPA, 16 U.S.C. § 817(1), a non-federal hydroelectric project must be licensed (unless it has a still-valid pre-1920 federal permit) if it: (1) is located on a navigable water of the United States, (2) occupies lands or reservations of the United States, (3) uses the surplus water or water power from a government dam; or (4) is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935, and affects the interests of interstate or foreign commerce.

Section 4(e) of the FPA authorizes the Commission to issue licenses for hydroelectric project works, including reservoirs. Section 23(b)(1) of the FPA requires (with exceptions not relevant here) a Commission license for the operation of non-federal hydroelectric project works, including reservoirs, that are used to generate electric power on any navigable waters of the United States. Storage reservoirs that are not directly connected to other project works must be licensed if they are necessary or appropriate in the maintenance and operation of a complete unit of hydropower improvement or development. The Commission makes this finding by examining the facts in each case, considering the reservoir's effect on downstream generation and its storage capacity, location, and purpose, to determine if there are significant generation benefits to a downstream project or projects. The Commission has found, and the DC Circuit has affirmed, that a contribution to downstream electric generation of at least two percent amounts to a significant generation benefit.<sup>1</sup>

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<sup>1</sup> See *Domtar Maine Corp., Inc. v. FERC*, 347 F.3d 304, 311-12 (D.C. Cir. 2003); *Chippewa and Flambeau Improvement Co. v. FERC*, 325 F.3d 353 (D.C. Cir. 2003).

The Commission is soliciting comments, motions to intervene, and protests in these proceedings. Comments, motions to intervene, and protests must be filed by thirty **(30) days from notice or September 9, 2022**. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR §§ 385.210, 211, and 214. In determining the appropriate action to take, the Commission will consider all protests or comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number UL22-1-000.

For further information, please contact Jennifer Polardino at (202) 502-6437 or [Jennifer.Polarдино@ferc.gov](mailto:Jennifer.Polarдино@ferc.gov).

**Dated:** August 10, 2022.

**Kimberly D. Bose,**  
*Secretary.*